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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UIL Number: 4943.00-00

Date: MAY 15 2003

Contact Person:

Identification Number:

Telephone Number:

T:EO:BR 3

Employer Identification Number:

Legend:
Trust =
Founder =
A =
B =
C =
D =
E =
F =
G =
H =
I =
J =

Dear Sir or Madam:

This is in response to your ruling request dated October 8, 2002 which requests an extension of the period within which you are permitted to dispose of your excess business holdings under Section 4943 of the Internal Revenue Code.

FACTS:

You are exempt under section 501(c)(3) of the Code and are a private foundation within the meaning of section 509(a) of the Code.

You were established by Trust through the trust agreement dated D. You were incorporated as a non-profit corporation on E. Upon the death of the founder of the trust, you were the principal beneficiary of the Trust. You were funded through the assets of the founder that were passed from his estate to the Trust with the residue of the trust passed to you.

Among the assets that passed to you was F% of the outstanding stock of A. A consists of three different I clubs and various real estate holdings adjacent to the I clubs. On G, you received H% of the total outstanding common stock of A. In J you received additional shares of

A which brought your ownership interest to F%.

You were successful in the disposition of two of the three I clubs a few years ago. However the remaining I club (the "Club") has not been sold to date. You have represented that you have made diligent and continuous efforts to dispose of this remaining facility. Several years ago, prior to you receiving any stock of A, A entered into negotiations with B to sell the Club, but to no avail. Recently A attempted to sell the Club to C which eventually declined to purchase the Club. You submitted the document indicating the declination of the offer.

You list various factors that have impeded your ability to sell the Club. The first factor is that the Club's facilities require substantial capital improvements. Since 1996, the Club has incurred significant outlays toward remodeling and refixturing. The most recent capital improvement program will not be completed until 2003-2004.

The second factor involves the Club's hardware and software along with the need to reorganize and restructure its bookkeeping department. You state your computer hardware and software is inadequate and outdated. This has resulted in unreliable accounting information and prevented you from presenting this information to a potential buyer. You attempted to alleviate this deficiency by converting to a vendor's software but this proved to be unsatisfactory. You then purchased another system from the same vendor that purports to provide an integrated accounting system and enable A to collect and manage three years of financial, accounting and membership information that potential buyers require. You indicate the primary factor for the sale of the Club is based on at least a three-year multiple of earnings.

You represent the third factor that makes disposition of A more difficult is the real estate holdings which are used in connection with the Club. You indicate that most I club operators have a lack of interest in acquiring these holdings in addition to your facilities. You also mention that the large quantity of Club's members has made the sale of the Club difficult in light of current economic conditions.

You represent that without the extension period requested, you will not be able to realize the true value of A's stock based upon the capital improvements and software conversion mentioned above.

You have submitted to your state's Attorney General plans for disposing of your holdings in the Club and will forward any response.

LAW:

Section 501(c)(3) of the Code exempts from Federal income tax organizations organized and operated exclusively for charitable or educational purposes.

Section 509(a) of the Code provides that, unless specifically excepted, a domestic or foreign organization described in section 501(c)(3) is a private foundation and subject to the excise taxes of Chapter 42.

Section 4943(a) of the Code imposes a tax on the excess business holdings of any private

foundation in a business enterprise during any taxable year.

Section 4943(c)(1) of the Code defines the term excess business holdings as meaning with respect to the holding of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

Section 4943(c)(2)(C) of the Code provides that a private foundation shall not be treated as having excess business holdings in any corporation in which it (together with all other private foundations which are described in section 4946(a)(1)(H)) owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock.

Section 4943(c)(6) of the Code provides that, with certain exceptions not applicable here, if after May 26,1969, there is a change in the holdings in a business enterprise (other than by purpose by the private foundation or by a disqualified person) which causes the private foundation to have --

(A) excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the 5-year period beginning on the date of such change in holdings; or

(B) an increase in excess business holdings in such enterprise (determined without regard to subparagraph (A), subparagraph (A) shall apply, except that the excess holdings immediately preceding the increase therein shall not be treated, solely because of such increase, as held by a disqualified person (rather than by the foundation).

Section 4943(c)(7) of the Code provides that the Secretary may extend for an additional 5 year period the period under subparagraph (6) for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if --

(A) the foundation establishes that --

(i) diligent efforts to dispose of such holdings have been made within the initial 5-year period and

(ii) disposition within the initial 5-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of such holdings,

(B) before the close of the initial 5-year period --

(i) the private foundation submits to the Secretary a plan for disposing of all of the excess business holdings involved in the extension, and

(ii) the private foundations submits the plan described in clause (i) to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Secretary any response received by the private foundation from the Attorney General (or other appropriate State official) to such plan during such 5-year period, and

(C) the Secretary determines that such plan can reasonably be expected to be carried out before the close of the extension period.

Section 53.4943-6(b)(1) of the Foundation and Similar Excise Tax Regulations provides that in the case of an acquisition of holdings in a business enterprise by a private foundation pursuant to the terms of a will or trust, the five-year period described in section 4943(c)(6) of the Code and in this section shall not commence until the date on which the distribution of such holdings from the estate or trust to the foundation occurs.

ANALYSIS:

You submitted information which shows the trust gave two large bequests totaling F% of A's stock to you. At this point, your interest in the A exceeded the amount of permitted holdings under section 4943(c)(2) of the Code and initiated the five-year period allowed to dispose of a bequest under section 4943(c)(6) and section 53.4943-6(b)(1) of the regulations in order to avoid the imposition of tax under section 4943(a). Without the five-year grace period, you would have excess business holdings pursuant to section 4943(c)(1) of the Code. You have represented that you have engaged in diligent efforts to dispose of your excess business holdings within the initial five-year period within which you had to dispose of these shares and were unable to do so by reason of the size, complexity and diversity of your holdings in the corporation. You have also indicated that, if we extend the period within which you are to dispose of your excess business holdings, at the end of this extended period you will have disposed of your holdings of common shares of stock in A.

You state that the accounting department's reorganization and upgrade of computer systems will be complete by May 2003. You anticipate making various capital improvements through 2005. You expect to have a reliable track record of financial, accounting and membership information to present to buyers by May 2006. You indicate that after establishing a three year financial history, you will be in a position to aggressively market the sale of the

Club and secure a qualified buyer.

RULING:

Accordingly, based on the information submitted we rule as follows:

1. As provided in section 4943(c)(7) of the Code, an extension through August 27, 2007 is granted to you to allow you to dispose of your excess business holdings in A.

2. If at the end of this period, your holdings in A have been reduced to under 2 percent (voting stock and value) of the common stock in A, you will come within the 2 percent permitted holdings rule of section 4943(c)(2)(C) and will not have excess business holdings in A.

This ruling is based on the understanding that there will be no material change in the facts upon which it is based. Any changes that may have a bearing on your tax status should be reported to the Service. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Because this letter could help resolve future questions about your income tax responsibility, please keep a copy of this ruling in your permanent records. If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

We have sent a copy of this letter to your authorized representative as indicated in your power of attorney.

Sincerely,

(signed) Robert C. Harper, Jr.

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3